

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 923

UNITED STATES OF AMERICA, PETITIONER

v.

THE ALLEN-BRADLEY COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

The brief in opposition filed by the taxpayer erroneously asserts (pp. 9-10) that the decision of the Court of Claims in this case is not in conflict with that of the Court of Appeals for the Second Circuit in *Commissioner v. National Lead Co.*, 230 F. 2d 161, in which a petition for certiorari (No. 988) has been filed and the Government does not oppose review.

The ground on which the taxpayer attempts to distinguish *National Lead* is that in that case (p. 9) "the facilities in question were never certified as being necessary in the interest of national defense in their entirety", while here, it is

asserted (pp. 2-4, 5-7), the facilities were certified as being necessary in their entirety, although the certificates embraced only a percentage of the cost of the facilities. However, the certificates issued to the taxpayer in this case are, in all material respects, identical with the certificates issued to the taxpayer in the *National Lead* case. Thus, Necessity Certificate WP-N-27705, as amended, issued in the present case stated that the described facilities were "necessary in the interest of National Defense during the emergency period up to 80% of the cost attributable to the construction, erection, installation or acquisition thereof * * *." (R. 7-8). The other certificates issued to the taxpayer (R. 9-10) were substantially identical.

In the *National Lead* case the certificates also provided (No. 988, R. 5-6) that the described facilities were "necessary in the interest of national defense during the emergency period up to [a stated percentage] of the cost attributable to the construction, reconstruction, erection, installation or acquisition thereof * * *."

Any claim that the certificates involved in *National Lead* were different from those involved here is plainly without basis in fact. Furthermore, the conflict between the decisions of the two courts (which was expressly recognized by the Court of Claims in its opinion in this case) arises from the fact that the Second Circuit refuses to

permit a collateral attack, in the tax proceeding, on the administrative decision in certifying only part of the cost of the facilities, while the Court of Claims does precisely the contrary.

In these circumstances, there is a clear and direct conflict in decisions. For that reason, and for the additional reasons stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

HILBERT P. ZARKY,
Attorney.

JUNE, 1956.